



*Project co-financed by the European Regional Development Fund under the Innovative Economy Operational Program*

**SALES AGREEMENT No PLCRC/2830700/06/2603/2014**

Concluded on ..... 2014, by and between:

**ABB Sp. z o.o.**, with its registered office in Warsaw; address: Warszawa (04-713), Żegańska Str. 1, entered in the Register of Entrepreneurs maintained by the District Court for the Capital City of Warsaw, 13th Commercial Division of the National Court Register, under KRS number 0000004745, share capital of PLN 350,655,734.00; (Tax Identification Number (NIP) 526-030-44-84; Statistical Identification Number (REGON): 010017168; GIOŚ No (Chief Inspectorate of Environmental Protection Number) E0008536WBW), represented by:  
hereinafter referred to as the "Purchaser"

and ..... in ..... at .....Str. conducting business activity in ....., acting on the basis of an entry in the business register under No ....., hereinafter referred to as the "Seller".

or

and ..... **Sp. z o.o.** with its registered office in ..... ; address: ..... .  
.....Str., entered in the Register of Entrepreneurs maintained by the District Court .....  
– ..... Commercial Division of the National Court Register, under KRS number .....  
....., share capital of PLN .....; (Tax Identification Number (NIP); Statistical Identification Number (REGON): .....; GIOŚ No (Chief Inspectorate of Environmental Protection Number) .....), represented by:

.....  
.....

hereinafter referred to as the "Seller".

**§ 1**

**Subject matter and scope of the Agreement**

1. The subject matter of the Agreement shall be the sale of device generating high voltage variable stresses - High Voltage Impulse test system for R&D purposes , hereinafter referred to as the "System".
2. The characterisation and description of the System shall be presented in **Annex No. 1** hereto.
3. The subject matter of the Agreement shall include:
  - Execution
  - Delivery
  - Software installation and configuration
  - Participation in acceptance tests
4. The System shall be delivered together with the appropriate software which is necessary for the System operation.
5. In exchange for the remuneration referred to in § 5 section 1, the Seller shall transfer to the Purchaser the author's economic rights to the Software to the extent necessary to use the System and in all fields of exploitation: the use of the Software in accordance with the purpose and assumptions thereof, recording, and also permanent or temporary reproduction, in whole or in part, using any means and in any form, in particular for the purpose of entering, displaying, using, transferring and storing, and also producing copies thereof using any technique, including printing, reprographic, magnetic recording and digital technique, reproduction by printing, with the use of reprographic devices and digital techniques, the use of the works developed in accordance with their intended purpose, modernisation of or changes in the works developed, including the exercising of the derivative copyright to the Software developed.

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6. The Seller represents that the subject matter of the Agreement, being sold, is new and complete and is not encumbered with any rights of third parties.
7. The transfer of the ownership of the subject matter of the Agreement shall not require any additional performance by the Parties and the ownership shall pass on to the Purchaser as of the date of signing of the Final Acceptance Protocol of the Agreement performance.
8. The Seller shall be liable for any damage caused by the performance of the Agreement.
9. The subject matter of the Agreement, delivered by the Seller, shall be accompanied by CE statement of conformity.
10. The subject matter of the Agreement shall be executed in accordance with the agreed lump-sum settlement of the remuneration.

## § 2

### Terms and conditions of the Agreement performance

1. Place of the Agreement performance (delivery): Branch Office of ABB Sp. z o.o. in Kraków, Starowiślna Str. 13 A.
2. The delivery and installation of devices shall take place on the Purchaser's business day from 08:30 a.m. until 4:00 p.m.
3. The transport of the Device shall be conducted at the expense and risk of the Seller.
4. The Seller represents that it has all qualifications and licences to execute the subject matter hereof, has the financial capacity to carry out the work and to pay the remuneration, and that employees or other persons acting on behalf of the Seller hold valid medical examinations, valid OHS training certificates, have appropriate qualifications and are equipped with approved personal and collective protective equipment.
5. The Seller shall agree to execute the subject matter hereof in accordance with the art and technical expertise in this area and maintenance requirements.
6. The Seller shall not be permitted to subcontract the performance of the Agreement to any third parties without the Contracting Entity's consent. In each case, the Seller shall be liable to the Purchaser for any damage caused by the subcontractors, as for the Seller's own actions.
7. The Seller shall be liable to the Purchaser for non-performance or negligent performance of the Agreement in a situation where the execution of the subject matter hereof has been subcontracted to other entities, as for the Seller's own actions.
8. The Seller shall be obliged to remedy a damage caused by non-performance or negligent performance of the Agreement, unless the non-performance or negligent performance is the effect of any circumstances for which the Seller is not responsible.
9. The representative and the person responsible, on the part of ABB Sp. z o.o., for matters connected with the performance of the Agreement, and authorised to accept the work completed on the part of the Contracting Entity, is Mr Marek Florkowski, e-mail address: marek.florkowski@pl.abb.com.
10. The person authorised, on the part of the Contracting Entity, to conduct detailed inspections/audits of occupational health and safety during the execution of the work by the Seller, is the OHS Specialist – Sebastian Osiński, e-mail address: sebastian.osinski@pl.abb.com.
11. The coordinator of the work covered by the Agreement and the person authorised to hand over the completed work on the part of the Seller is: ....., e-mail address:.....

## § 3

### Occupational health and safety and environmental protection

The Seller shall be obliged to:

1. Respect the standards of ABB Sp. z o.o. presented in **Annex No 2**,
2. Conduct the work/provide services in accordance with the occupational health and safety requirements presented in **Annex No 3**.
3. Conduct the work/provide services in accordance with the requirements of applicable environmental protection laws, and in accordance with the waste management law, in particular in the case of hazardous waste.



4. During the performance of the Agreement, the waste produced shall be the Contractor's waste, and until the disposal thereof, the waste shall be segregated by the Contractor and stored in designated places and in appropriate packaging in order to prevent the penetration of any parts thereof into the environment.
5. The Parties to the Agreement shall appoint on the Contractor's part, as the Coordinator, ..... tel. ...., e-mail: ....., who supervises occupational health and safety with regard to all employees working in the same place,
6. The appointment of the Coordinator, referred to in section 5, shall not release the Party to the Agreement from the obligation to ensure occupational health and safety for employees hired by them.
7. The Purchaser shall reserve the right to conduct audit/inspection on the work site in terms of compliance with OHS and fire protection, environmental protection and waste management regulations. The Contractor shall be obliged to comply with the orders issued at that time.

#### § 4

#### Implementation dates

1. The Seller shall be obliged to execute the subject matter of the Agreement no later than 31<sup>st</sup> March 2015. The execution of the subject matter of the Agreement within the deadline set out in the preceding sentence shall be understood as the completion of all work, i.e., the delivery to the specified place of delivery, installation and configuration of the Software and conducting Acceptance Tests.
2. The performance of the Agreement shall be confirmed by the Final Acceptance Protocol signed without any objections by the Parties or their representatives.
3. The Purchaser shall have the right not to accept the subject matter of the Agreement if any faults or defects have been found. The acceptance of the subject matter of the Agreement shall be suspended until those faults or defects have been remedied. In this situation, contractual penalty shall be charged in accordance with § 6 section 1.
4. The Seller shall be obliged to notify the Purchaser 2 days in advance of the readiness for handing over the subject matter of the Agreement.

#### § 5

#### Terms of payment

1. The Parties agree on a lump-sum remuneration for the execution of the subject matter of the Agreement in the amount of **EUR** ..... plus VAT (say: EUR ..... ), including the amount of ..... for the transfer of author's economic rights to the Software.
2. The remuneration, referred to in section 1, shall include all costs necessary to perform the Agreement, in particular: the cost of the System purchase, transport of devices, installation, materials, labour, the work of equipment and people. The remuneration shall also include the costs of use of the licence for the Software delivered by the Seller.
3. The remuneration for performance of the Agreement shall be paid by bank transfer to the Seller's account on the basis of an invoice, delivered to the address specified in section 4, within the following deadline:
  - on the first Wednesday after the lapse of 30 days of the date of receipt by the Contracting Entity of the VAT invoice, together with the Acceptance Protocol, referred to in section 4.
4. Address data for the invoice issue:

- a) An invoice sent by MAIL shall be addressed to:

Re: ABB Sp. z o.o.  
Postfach (P.O. Box) 22 11 53  
04131 Leipzig  
Deutschland

or

- b) An invoice sent by COURIER shall be addressed to:

Re: ABB Sp. z o.o.



Landsberger Str. 140  
04157 Leipzig  
Deutschland

Other correspondence relating to purchases and services provided to ABB Sp. z o.o. shall be sent independently of the invoices to correspondence addresses of ABB Sp. z o.o. or submitted directly to the units placing orders in a given location.

5. Additionally, data included in the invoice shall contain:
  - a) Number of the Agreement with the net value
  - b) Quantity – (if applicable)
  - c) Measure unit compatible with the ISO standard – (if applicable)
  - d) Name and surname of a person on the part of ABB, responsible for matters related to the performance of the Agreement
  - e) The date of the invoice issuance and the date of sale shall be compatible with the ISO standard (yyyy.mm.dd, i.e., year, month, day),
6. The invoice shall be:
  - a) in the form of a single-sided print on uniform, preferably white paper
  - b) typewritten, without any handwritten annotations, unnecessary stamps and marks
7. The invoice shall be sent in an envelope marked "INVOICE". Except the invoice, the envelope shall contain only the necessary attachments confirming the delivery/acceptance of the invoice subject matter (e.g., the Acceptance Protocol).
8. Payments shall be made by the Purchaser by bank transfer to the account indicated in invoices.
9. In the case of any delay in payments, the Seller shall have the right to charge statutory interest.

#### **Art. 6**

#### **Contractual penalties and liability**

1. For a failure to keep the deadline for execution of the subject matter of the Agreement, set out in § 4 section 1, the Seller shall be obliged to pay the Purchaser a contractual penalty of PLN 1,000.00 /say: one thousand zlotys/ for each day of delay.
2. If the damage caused by a failure to keep the deadline for performance of the Agreement exceeds the contractual penalty, set out in section 1, the Purchaser shall have the right to claim supplementary damages on general terms and conditions.
3. If the delay in performance of the Agreement is longer than 20 business days, counting from the deadline set out in § 4 section 1, the Purchaser, without any additional demand, shall have the right, within 20 days of the expiry of the deadline set out above, to withdraw from the Agreement, either in whole or in the part corresponding to the subject matter hereof which has not been executed. In the case of withdrawal from the Agreement, the Purchaser shall have the right to claim from the Seller a lump-sum compensation for damages at 20% of the net remuneration under the Agreement, set out in § 5 section 1, for the damage caused by non-performance of the Agreement, either in whole or in part. The Seller shall accept the level of compensation for damages set out on a lump-sum basis and shall waive the right to lodge any claims against the Purchaser, including benefits lost in connection with the withdrawal from the Agreement.

#### **§ 7**

#### **Guarantee**

1. The Seller shall grant to the Purchaser guarantee for efficient and reliable operation of the System provided under the Agreement for the period of ..... months. The guarantee shall start from the date of hand-over, on the basis of the Final Acceptance Protocol, of the completed subject matter hereof.
2. The Purchaser shall agree to immediately notify the Seller of the occurrence of any defects or faults. Notifications of defects or faults shall be sent to the e-mail address of the service centre: ....., or in writing to the address: .....

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3. The Seller shall be obliged to immediately remove, at its own expense, any defects or faults, no later than within 7 days from the notification date or the date of receipt of the System sent to the place indicated by the Seller.
4. The Seller shall remove defects or faults at the System installation place or at another place indicated by the Seller, but the Seller shall be obliged to pay the costs of transport (outward and return) of the System to the indicated place and insurance during the transport. If the Seller fails to indicate the place of repair of the defect or fault within 2 days of the time of notification of the defect or fault, the System installation place shall be deemed the place of repair.
5. If the defects or faults have not been remedied within the time set out in section 3, the Purchaser shall have the right to contract the remedy of defects or faults to a third party at the Seller's expense (substitute performance).
6. Contracting the remedy of defects or faults to a third party shall authorise the Purchaser to charge contractual penalties, in accordance with section 6, for the period until the execution of the aforesaid work by a third party.
7. A failure to keep the deadline for remedy of the defects or faults, set out in section 3, shall result in the Purchaser's charging and the Seller's obligation to pay a contractual penalty of equivalent of PLN 200.00 for each day of delay.
8. Any mechanical damage resulting from improper operation and from operation contrary to operating instructions shall not be covered by the guarantee.
9. The Seller's service centre shall train the Purchaser's employees in the area of operation of the devices within the subject matter of the Agreement.

## § 8 Performance Bond

1. Within 14 days of the date of signing hereof, the Seller shall deliver to the Purchaser, as security for appropriate and timely performance of the Agreement, an irrevocable, unconditional, divisible and payable on first demand insurance or bank guarantee, issued by a renowned Bank accepted by the Purchaser or by a renowned insurance company accepted by the Purchaser, and in accordance with the template presented in **Annex No 4**, for 20% of the net performance value ("Performance Bond"). The Purchaser shall be able to use the Performance Bond to cover any amounts due hereunder, including contractual penalties, compensation for negligent performance of the Agreement, lump-sum compensations for withdrawal from the Agreement and costs of substitute performance.
2. If the Performance Bond has not been presented within the deadline set out in section 1 or has been presented in a form not compatible with the attached template, the Purchaser shall have the right, without any additional demand, within 20 days of the expiry of the deadline set out above, to withdraw from the Agreement, either in whole or in the part corresponding to the subject matter hereof which has not been executed. In the case of withdrawal from the Agreement, referred to in the preceding sentence, the Contracting Entity shall have the right to claim from the Contractor a lump-sum compensation for damages at 20% of the contractual net remuneration, set out in § 4 section 1. The Contractor shall accept the level of compensation for damages set out on a lump-sum basis and shall waive the right to lodge any claims against the Contracting Entity, including benefits lost in connection with the withdrawal from the Agreement.
3. Notwithstanding the Purchaser's right to withdraw from the Agreement, referred to in section 2, the Purchaser shall have the right to charge the Seller with contractual penalty of equivalent of PLN 500 for each day of delay in delivering or supplementing the Performance Bond, in accordance with the provisions of this Article.
4. All costs connected with the procurement of the Performance Bond and keeping it valid shall be borne by the Seller, subject to section 3 below.
5. The Performance Bond shall be valid during the period of performance hereof until the date of signing of the Final Acceptance Protocol of the subject matter of the Agreement plus 30 days. The Seller shall agree to extend the period of validity of the Performance Bond if it expires before the aforesaid date, e.g., as a result of delays in performance of the Agreement. To the extent the delay in performance of the Agreement is caused by circumstances that the Purchaser is responsible for, the Purchaser shall be obliged to pay the costs of extension of the Performance Bond. If the period of validity of the Performance Bond has not been extended at least 14 days before the expiry thereof, the Purchaser



shall have the right to retain from the payment of the last invoice the value of the deposit securing the contract performance and to treat that amount as cash deposit securing the Purchaser's claims. If another Performance Bond is presented after the expiry of the validity period, the Purchaser shall be obliged to return the amounts retained to secure the Purchaser's claims to the Seller, or the amounts received in connection with drawing on the previous Performance Bond to the underwriter, within 14 days of the date of presentation of another Performance Bond.

6. The Purchaser shall agree to notify the Seller in writing of an intention to draw on the Performance Bond in advance, specifying in particular the nature of the violation of the provisions hereof in view of which the Purchaser intends to lodge the claim under the Performance Bond.

## § 9

### Industrial and intellectual property

1. The Seller represents that the subject matter of the Agreement shall not violate any rights of third parties, in particular any copyrights, industrial property rights and/or know-how.
2. In exchange for the contractual remuneration, set out in § 5 section 1, the Seller shall transfer to the Purchaser the author's economic rights and derivative rights to the documentation prepared hereunder and to the Software in all fields of exploitation of the work, without any limitations with regard to time and territory, in particular to the extent required to use, operate and repair the System.
3. The Seller shall accept the liability for all claims of third parties against the Purchaser, connected with any violation by the Seller or its subcontractors of those rights of third parties, and in particular any copyrights and intellectual property rights and/or know-how.
4. The Seller shall hereby transfer to the Purchaser the full ownership rights to any Intellectual Property arising in connection with the performance hereof for the full duration of such rights, wherever in the world enforceable. The Seller further agrees to execute all documents and to make all assignments, at the Purchaser's request and expense, and to carry out other activities as may be necessary to perfect the Purchaser's ownership title to the Intellectual Property or to register the Purchaser as the owner of the Intellectual Property with any registers, including but not limited to any registers kept by governmental registration authorities or private registration organisations. In the event the Parties have expressly agreed in a separate written agreement that the Intellectual Property Rights shall not be assigned to the Purchaser (as stated above), the Seller automatically grants herewith the Purchaser and its Affiliates a royalty free, worldwide, irrevocable, non-exclusive, perpetual licence to use the Intellectual Property, including but not limited to the right to further improve, develop, market, distribute, sub-license, exploit or otherwise use the Intellectual Property in any way.
5. To the full extent permitted by applicable laws, the Seller shall procure documents confirming the waiver to exercise any author's moral rights arising as a result of the creation of the Intellectual Property from any Parties engaged in the creation thereof.
6. For the avoidance of doubt, the Purchaser shall have the right to assign and sub-license, and otherwise transfer its rights under the above sections.
7. The Seller shall refrain from any actions prejudicial to the subsistence of the Intellectual Property Rights arising as a result of the performance hereof or connected with them, and from any actions prejudicial to the assignment of the aforesaid Rights.

## § 10

### Final provisions

1. The Parties to the Agreement shall be obliged to treat all information concerning the matters of the other Party as confidential. The Parties to the Agreement shall not use any such information for the purposes other than those connected with the performance of the Agreement and shall not disclose it to any third parties without written consent of the other Party. The aforesaid information may be disclosed only to employees of the Purchaser and of the Seller or other persons acting on request of a given Party to the extent necessary to properly execute the subject matter hereof. The principle of confidentiality shall also apply to the employees.
2. Any amendments hereto shall be made in writing, otherwise being null and void.
3. Any disputes arising in connection with this Agreement shall be settled by the competent Court in accordance with generally applicable Polish law.



4. Any disputes relating to the performance hereof shall be submitted by the Parties for resolution under the Polish law.
5. In matters not regulated herein, there shall apply in the first place the provisions of the General Terms And Conditions for Purchase of Goods by ABB GTC ABB/GOODS (2014-1 Standard) of 1 April 2014, which constitute Annex No 5 hereto.
6. In matters not regulated herein and/or in General Terms And Conditions for Purchase of Goods by ABB GTC ABB/GOODS (2014-1 Standard) of 1 April 2014, there shall apply the relevant provisions of the Civil Code and other applicable laws.
7. The Agreement was made in three counterparts, one counterpart for the Seller and two counterparts for the Purchaser.

## THE SELLER

## THE PURCHASER

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**Annex No. 1**  
**SALES AGREEMENT no PLCRC/2830700/06/4205/2014**  
**Concluded on ....**

**Description of item requirements:** Device generating high voltage variable stresses - High Voltage Impulse test system for R&D purposes

The technical requirements are set as minimum acceptable.

**1. Specification:**

High Voltage Impulse test system for R&D purposes consisting of:

- High Voltage Impulse generator, voltage 400 kV, energy 20 kJ, for generating lightning, switching surges as well as non standard waveforms
- Integrated earthing system
- Charging rectifier system 100 kV, 20 mA, with automatic polarity reversal
- Programmable control unit including:
  - software for test sequence programming
  - communication interface
  - trigger synchronization with external voltage
  - control of chopping gaps
  - built-in overvoltage protection
- Digital signal acquisition and data evaluation system, at least 2 channels, at least 10bits and sampling 100 MS/s
- Mobile capacitive impulse voltage divider 400 kV, 1nF
- Vertical chopping gap with distance motor control and triggering unit
- Isolating transformer between power network and generator supply system
- Accessories: measuring shunts, cabling
- Power supply frequency 50Hz, Polish plug system

THE SELLER

THE PURCHASER





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## **ABB Sp. z o.o.s Workplace Health and Safety (bhp), Environmental and Fire Protection Requirements:**

### **1. Contractor/Subcontractor Responsibilities in Workplace Safety, Health and Environmental Protection.**

**1.1** The contractor/subcontractor agrees to carry out the contract according to technical and professional expertise, while meeting the requirements arising from applicable provisions, standards, including in particular compliance with:

- fire, safety, health, environmental standards and regulations as well as the Clients internal regulations in that regard;
- waste management law, in particular dangerous waste, and to keep records of handling such waste (waste accounting and transfer records).

**1.2** The Clients appointment of a coordinator to supervise workplace health and safety issues will not release the contractor/subcontractor from their legal responsibility for ensuring safe working conditions for the workers engaged by them.

**1.3** Prior to commencing work, the contractor/subcontractor is required to:

- have safety instructions;
- make such safety instructions known to the workers engaged by them;
- provide job-specific training, assess occupational risks for their workers, all of which should be documented;
- make ABB Sp. z o.o. Work Standards known to their workers (the duty to provide such standards rests with the Client) and enforce compliance with them.

**1.4** Moreover, the contractor/subcontractor is required to:

- issue their workers with work clothes (bearing their company logo), work shoes, personal protection items adequate to the existing risks and enforce compliance with them;
- maintain their work area in a clean and orderly condition;
- use the engineering machinery and plant (including power tools, scaffolding, ladders, etc.) which are confirmed to be in good working condition and which have the required certification (CE) or declarations of conformity;
- suspend work if there is a direct threat to the health or life of either party`s workers;
- provide first aid items and access to fire equipment for the employees.

**1.5** In order to perform the work under the contract the contractor/subcontractor will ensure that the workers:

- have up-to-date medical evaluation certificates, taking into account their specific positions or jobs performed;
- are up to date with workplace health and safety training;
- have the appropriate licenses necessary to perform the work.

The above documents should be made available to the Client at its request and to other external agencies with inspection rights.

**1.6** The contractor/subcontractor is required to maintain order at their jobs/workplaces and at sanitary and social premises intended for their workers.

**1.7** If as a result of work conducted a breakdown, accident, fire or other event occurs the contractor/subcontractor is required to:

- ensure medical assistance to the injured parties;
- notify the appropriate agencies (police, fire department), the manager or persons responsible for supervision on behalf of the Client (ABB);
- secure the scene of the event/accident;
- prepare the records required by regulations.



All records of such an event/accident should be made available to the Client at its request.

- 1.8 The subcontractor agrees to carry out the contract in a manner which guarantees lawful waste management, in particular dangerous waste, and to keep records of such waste handling (waste accounting and transfer records).
- 1.9 If the contractor/subcontractor causes an extreme environmental threat, he/she will be required to personally take part in remedying the effects, and to cover the cost incurred to restore the environment to the previous condition.
- 1.10 The contractor/subcontractor will be fully liable for any violation of workplace health and safety (bhp) or environmental regulations, including any damages to the Client (ABB) or third parties. The contractor/subcontractor or is required to pay any penalties imposed by authorized agencies for violation of the above regulations.

**2. Clients Responsibilities and Rights:**

- 2.1 If required by the scope and extent of work performed, the Client will appoint a workplace health and safety (bhp) coordinator to supervise all the workers irrespective of which subcontractor engaged them.
- 2.2 The Client is required to provide ABB work standards to the contractor/subcontractor.
- 2.3 The Client has the right to have the site audited by authorized auditors. The contractor/subcontractor must comply with the instructions issued by such auditors.
- 2.4 If the contractor/subcontractor violates workplace health and safety (bhp), fire or environmental regulations, employee rights, or fails to comply with the safety requirements for the tools and equipment used or uses materials without valid certification, the Client will have the right not to allow the persons carrying out the contract to work, to request that the use of unauthorized equipment and tools be discontinued or to suspend the work.
- 2.5 If a direct threat is found to exist to the life or health of either party`s workers, the Client may immediately suspend the work until the threat is removed.

This appendix is an integral part of the agreement.

THE SELLER

THE PURCHASER



Project co-financed by the European Regional Development Fund under the Innovative Economy Operational Program

Annex No 4

Place, on .....

**PERFORMANCE  
AND RETENTION BOND**

**Underwriter:** .....

**Obligor:** .....

**Beneficiary:** ABB Sp. z o.o., ul. Żegańska 1, 04-713 Warszawa

**§ 1**

1. On ..... 2014, the Obligor entered into an agreement ..... (hereinafter: Agreement) with the Beneficiary on the sale of .....
2. Pursuant to the Agreement, the Obligor shall be obliged to provide a performance bond in the form of a bank or insurance guarantee.

**§ 2**

At the first written request, the Underwriter irrevocably and unconditionally undertakes to pay to the Beneficiary an amount of up to equivalent of ...PLN .... (say: .....), constituting the sum insured against the non-performance or improper performance of the Agreement by the Obligor. The Contracting Entity shall be able to use the Performance Bond to cover any amounts due under this Agreement, including contractual penalties, remuneration for subcontractors, compensation for negligent performance of the Agreement, and costs of substitute performance.

**§ 3**

The amounts indicated in § 2 shall constitute the upper limit of the Underwriter's liability on the account specified accordingly in § 2. Each amount paid on account of the bond shall decrease the total sum insured and the sum insured specified accordingly in § 2.

**§ 4**

This bond shall be valid from ..... to ....., inclusive, on the account specified in § 2 of the Bond.

The bond shall expire automatically and completely, if:

1. the demand for payment together with the required documents is not submitted with the Underwriter within the above deadline;



2. the Obligor fulfils the obligation constituting the subject of the bond;
3. the Beneficiary releases the Obligor or the Underwriter from all obligations stipulated in the bond prior to its expiry;
4. the payments paid out by the Underwriter reached the amount of the bond;
5. the Beneficiary returns the original bond to the Underwriter prior to its expiry.

#### **§ 5**

The Underwriter shall make the payment at the first written request of the Beneficiary within 14 days from receiving this request together with the written declaration of the Beneficiary that the Obligor, despite the written request and within the time limit set in the request, failed to fulfil or fulfilled negligently its obligations on the account specified accordingly in § 2.

The payment from the bond shall be transferred to the account indicated by the Beneficiary in the request for payment, provided that:

1. The request for payment is signed by persons authorised to represent the Beneficiary in this respect.
2. The Beneficiary submits the request for payment via the bank maintaining its account, which shall confirm the authenticity of signatures on the call.

#### **§ 6**

This bond should be returned to the Underwriter after its expiry or if the Beneficiary's claims are satisfied in full. The obligation under the bond shall expire upon the expiry of the bond, regardless of the fact whether the bond was returned.

#### **§ 7**

Any liabilities under this bond may not be assigned to a third party.

#### **§ 8**

1. Provisions of the Polish law shall apply to the rights and duties under this bond and to the settlement of disputes arising in connection herewith.
2. Any disputes which may arise in connection with this bond shall be settled by the competent court, in accordance with applicable laws.

#### **§ 9**

This bond has been drawn up in a single copy.

.....  
*(name stamp and signature of the representing party)*

# ABB GENERAL TERMS AND CONDITIONS

## FOR PURCHASE OF GOODS

### ABB GTC/GOODS (2014-1 STANDARD)

**DATE:** April 1<sup>st</sup>, 2014

**FOR:** ABB Affiliates' purchases of tangible movable items (goods).

#### 1. DEFINITIONS AND INTERPRETATION

1.1 In this document

**“ABB GTC/Goods”:** means the present ABB General Terms and Conditions for Purchase of Goods (2014-1 Standard);

**“Affiliate”:** means any entity, whether incorporated or not, which presently or in the future, directly or indirectly owns, is owned by, or is under common ownership with, by virtue of a controlling interest of 50 % or more of the voting rights or the capital, a Party to the contractual relationship on which this ABB GTC/Goods is applicable;

**“Contract”:** means Supplier's agreement to deliver the Goods to Customer, and Customer's acceptance of such Delivery of Goods under this ABB GTC/Goods, the Order and the documents attached to the Order;

**“Customer”:** means the purchasing ABB Affiliate ordering Goods from Supplier;

**“Delivery”:** means delivery completion of Goods by Supplier in accordance with INCOTERMS 2010 DAP unless otherwise specified in the Order;

**“Embedded Software”:** means software necessary for operation of Goods and embedded in and delivered as integral part of Goods, however excluding any other software, which shall be subject to a separate licence agreement;

**“Goods”:** means the tangible movable items to be delivered by Supplier under this ABB GTC/Goods and the related Order;

**“Intellectual Property (Rights)”:** all proprietary rights in results created intellectually (by thought) and protected by law, including but not limited to patents, patent applications and related divisionals and continuations, utility models, industrial designs, trade names, trademarks, copyrights (regarding software source codes, documentation, data, reports, tapes and other copyrightable material) and respective applications, renewals, extensions, restorations, or proprietary rights in results created intellectually (by thought) which are protected by confidentiality, including but not limited to know-how and trade secrets;

**“IPR Indemnification”:** means reimbursement of Customer by Supplier for costs, claims, demands, liabilities, expenses, damages or losses (including without limitation to any direct, indirect, or consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) arising out of Supplier's third party Intellectual Property Right infringements;

**“Open Source Software (OSS)”:** means publicly available and accessible software which can be used, modified and further developed by everybody, however always in compliance with the relevant publicly available underlying licence terms and conditions;

**“Order”:** consists of Customer filling in the Order form with all required Customer purchasing information based upon this ABB GTC/Goods, and such respective documents, specifications, drawings and annexures expressly referred to in or attached by Customer to such Order;

**“Party”:** means either Customer or Supplier;

**“Supplier”:** means the seller of the Goods such as the person, firm or company who accepts Customer's Order;

**“Variation Order”:** means a change to the Order such as to alter, to amend, to omit, to add to, or otherwise to change the Order or any parts thereof.

1.2 Unless otherwise specified in the present ABB GTC/Goods:

1.2.1 References to clauses are to clauses of the ABB GTC/Goods;

1.2.2 Headings to clauses are for convenience only and do not affect the interpretation of the ABB GTC/Goods;

1.2.3 The use of the singular includes the plural and vice versa;

1.2.4 The use of any gender includes all genders.

#### 2. APPLICATION OF TERMS

2.1 Each Order requires acceptance by Supplier either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part.

2.2 The ABB GTC/Goods are the only terms and conditions upon which Customer is prepared to deal with Supplier for the provision of Goods, and it shall govern the Contract between Customer and Supplier to the exclusion of all other terms or conditions, except if and to the extent otherwise expressly agreed in writing between Customer and Supplier.

2.3 No terms or conditions endorsed upon, delivered with or contained in Supplier's quotations, acknowledgements or acceptances of Orders, specifications or similar documents will form part of the Contract, and Supplier waives any right which it otherwise might have to rely on such other terms or conditions.

2.4 The ABB GTC/Goods version effective at the date when the Order was placed, applies to the respective Order, and any amendment(s) to the ABB GTC/Goods shall have no effect unless expressly agreed in writing and signed by duly authorised representatives of Customer and Supplier.

#### 3. SUPPLIER'S RESPONSIBILITIES

3.1 Supplier shall deliver the Goods as provided below:

3.1.1 in accordance with the applicable laws and regulations;

3.1.2 in accordance with the quality standards stated under Clause 9.1 and specified in the Order;

3.1.3 free from defects and from any rights of third parties;

3.1.4 on the due date specified in the Order; and

3.1.5 in the quantity specified in the Order.

3.2 Supplier shall not substitute or modify any of the materials in the Goods or make any changes to the design of the Goods without Customer's prior written approval.

3.3 Supplier shall take care that the Goods are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the Goods until Delivery completion.

3.4 Supplier shall submit invoices in an auditable form, complying with Supplier's and Customer's applicable local mandatory law, generally

accepted accounting principles and the specific Customer requirements, containing the following minimum information: Supplier name, address and reference person including contact details (telephone, e-mail etc.); invoice date; invoice number; Order number (same as stated in the Order); Supplier number (same as stated in the Order); address of Customer; quantity; specification of Goods supplied; price (total amount invoiced); currency; tax or VAT amount; tax or VAT number; payment terms.

3.5 Invoices shall be issued to Customer as stated in the Order and sent to the invoice address specified in the Order.

3.6 Customer may issue Variation Orders to Supplier to alter, amend, omit, add to, or otherwise change ordered Goods or parts thereof, and Supplier shall carry out such Variation Orders under the Order and/or ABB GTC/Goods. Agreed unit prices stated in the Order and/or otherwise agreed between Customer and Supplier shall apply.

3.7 In no event Supplier shall suspend the Delivery of any Goods to Customer.

#### **4. CUSTOMER'S RESPONSIBILITIES**

4.1 In consideration of the Goods delivered by Supplier in accordance with the terms and conditions of the respective Order and the ABB GTC/Goods, Customer shall pay to Supplier the purchase price stated in the Order provided the invoice fulfils the requirements of Clause 3.4.

4.2 Customer reserves the right to set off such amount owed to Supplier, or withhold payment for Goods not provided in accordance with the Order and the ABB GTC/Goods.

#### **5. DELIVERY**

5.1 The Goods shall be delivered in accordance with INCOTERMS 2010 DAP, to the point of delivery specified in the Order, or Customer's place of business if no other point of delivery has been specified by Customer.

5.2 Supplier shall ensure that each Delivery is accompanied by a delivery note, which shall contain the following minimum information (unless required otherwise by Customer): the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

5.3 The Goods shall be delivered during Customer's business operation hours unless otherwise requested by Customer.

5.4 Upon Delivery, Supplier (or its appointed carrier) shall provide Customer with such export documents as are necessary together with a delivery note.

5.5 Ownership (title) of the Goods shall pass to Customer at Delivery, except if otherwise expressly agreed. However, to the extent that the Goods contain Embedded Software, ownership (title) regarding such Embedded Software shall not be passed to Customer, however Customer and all users shall have a worldwide, irrevocable, perpetual, royalty-free right to use the Embedded Software as an integral part of such Goods or for servicing the Goods. In the event the Embedded Software or any part thereof is owned by a third party, Supplier shall be responsible for obtaining the respective software licences necessary from the third party before Delivery to comply with its obligations under the Order.

5.6 In the event the Embedded Software contains or uses Open Source Software, Supplier must fully specify and inform Customer in writing and prior to Delivery about all Open Source Software implemented into or used by the Embedded Software. In the event that Customer cannot approve any Open Source Software components contained in or used by the Embedded Software, Supplier agrees to replace or substitute the affected Open Source Software component(s) contained in or used by the Embedded Software.

5.7 Supplier shall invoice Customer upon Delivery in accordance with Clause 3.4, but such invoicing shall be conducted separately from despatch of the Goods to Customer.

#### **6. ACCEPTANCE OF GOODS**

6.1 Customer shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following Delivery or, in the case of a defect in the Goods, until a reasonable time after such defect has become apparent.

6.2 If any Goods delivered to Customer do not comply with Clause 3 (Supplier's Responsibilities), or are otherwise not in conformity with the Order, then, without limiting any other right or remedy that Customer may have under Clause 10 (Remedies), Customer may reject the Goods and request replacement of the Goods or recover all payments made to Supplier by Customer.

#### **7. DELAYED DELIVERY**

If Delivery of the Goods does not comply with the agreed delivery date(s) then, without prejudice to any other rights which it may have, Customer reserves the right to:

7.1 terminate the Contract in whole or in part;

7.2 refuse any subsequent delivery of the Goods which Supplier attempts to make;

7.3 recover from Supplier any expenditure reasonably incurred by Customer in obtaining the Goods in substitution from another supplier;

7.4 claim damages for any additional costs, loss or expenses incurred by Customer which are reasonably attributable to Supplier's failure to deliver the Goods on the agreed delivery date; and

7.5 claim additional compensation for liquidated damages if such compensation right is expressly stated in the respective Order.

#### **8. INSPECTION OF GOODS**

8.1 At any time prior to Delivery and during Supplier's business hours, Customer shall have the right at its cost to (i) inspect the Goods and Supplier's manufacturing units upon providing reasonable notice, and/or (ii) request test samples of the respective Goods, or any parts or materials thereof.

8.2 If the results of such inspection or test sampling cause Customer to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or with any specifications and/or patterns supplied or advised by Customer to Supplier, Customer shall inform Supplier and Supplier shall immediately take such action as is necessary to ensure conformity with the Order. In addition Supplier shall carry out such necessary additional inspection or testing at Supplier's own cost whereby Customer shall be entitled to be present and in attendance.

8.3 Notwithstanding any inspection or test sampling by Customer, Supplier shall remain fully responsible for the Goods compliance with the Order. This applies whether or not Customer has exercised its right of inspection and/or testing and shall not limit Supplier's obligations under the Order. For the avoidance of doubt, inspection or testing of Goods by Customer shall in no event exempt Supplier from or limit Supplier's warranties or liability in any way.

#### **9. WARRANTY**

9.1 Supplier warrants that the Goods:

9.1.1 comply with all agreed specifications, including all specified material, workmanship and the like, documentation and quality requirements, or in absence thereof are fit for the purposes for which goods of the same description type would ordinarily be used and keep the functionality and performance as expected by Customer according to Supplier's information, documentation and statements;

9.1.2 are fit for any particular purpose expressly or impliedly made known to Supplier in the Order and/or Order related documents;

9.1.3 are new and unused at the date of Delivery;

9.1.4 are free from defects and rights of third parties;

9.1.5 possess the qualities which Supplier has held out to Customer as a sample or model;

9.1.6 comply with Clause 12 (Compliance with Relevant Law).

9.2 The warranty period shall be twenty four (24) months from Delivery, or such other time period stated in the Order or otherwise expressly agreed in the Contract.

9.3 In case of non-compliance with the warranty provided under this Clause, Customer shall be entitled to enforce the remedies provided in Clause 10 (Remedies) hereunder.

## 10. REMEDIES

10.1 In case of breach of warranty under Clause 9 (Warranty) or if Supplier otherwise fails to comply with any of the terms of the respective Order, Customer shall give notice in writing to Supplier of such breach of warranty and provide Supplier an opportunity to swiftly remedy it. If no Supplier action to remedy such breach has been taken within forty eight (48) hours of receiving such Customer notification, Customer shall be entitled to any one or more of the following remedies at its own discretion and at Supplier's own expense:

10.1.1 to give Supplier another opportunity to carry out any additional work necessary to ensure that the terms and conditions of the Order are fulfilled;

10.1.2 to carry out (or to instruct a third party to carry out) any additional work necessary to make the Goods comply with the Order;

10.1.3 to obtain prompt replacement of the defective Goods by Goods conforming with the Order without defects;

10.1.4 to refuse to accept any further Goods, but without exemption from Supplier's liability for the defective Goods delivered by Supplier;

10.1.5 to claim such damages as may have been sustained by Customer as a result of Supplier's breaches of the respective Order;

10.1.6 to terminate the Contract in accordance with Clause 15.2.

10.2 In the event that Clauses 10.1.1, 10.1.2 or 10.1.3 apply, the entire warranty period of Clause 9.2 shall be restarted.

10.3 The rights and remedies available to Customer and contained in the ABB GTC/Goods are cumulative and are not exclusive of any rights or remedies available at law or in equity.

## 11. INTELLECTUAL PROPERTY

11.1 In the event that the Goods (and/or the Embedded Software) delivered by Supplier infringe any third party Intellectual Property Rights, Supplier shall, notwithstanding anything provided to the contrary or otherwise contained in this ABB GTC/Goods, the Order, or the Contract, provide IPR Indemnification to Customer. The IPR Indemnification applies whether or not Supplier may have been negligent or at fault and does not limit any further compensation rights of Customer. Supplier's obligation to indemnify Customer as provided under this Clause shall not apply if and to the extent the liability or damage was caused by Customer's own pre-existing Intellectual Property Rights contributed to, or implemented into the Goods provided by Supplier.

11.2 If any infringement claim is made against Customer, Customer may without prejudice to its rights under Clause 11.1 also request at its discretion and at Supplier's cost that Supplier (i) procures for Customer the right to continue using the Goods; (ii) modifies the Goods so that they cease to be infringing; or (iii) replaces the Goods so that they become non-infringing.

11.3 In the event Supplier cannot fulfil Customer's above request, Customer shall be entitled to terminate the Order, to reclaim all sums which Customer has paid to Supplier under the Order and to claim compensation in accordance with Clause 11.1 and for any other costs, losses or damages incurred whatsoever.

## 12. COMPLIANCE WITH RELEVANT LAW

12.1 The Goods covered by this ABB GTC/Goods shall be provided by Supplier in compliance with all relevant legislation, regulations, and codes of practice, guidance and other requirements of any relevant government or governmental agency applicable to Supplier. To the extent that such regulations are advisory rather than mandatory, the standard of compliance to be achieved by Supplier shall be in compliance with the generally accepted best practice of the relevant industry.

12.2 Both Parties warrant that each will not, directly or indirectly, and that each has no knowledge that the other Party or any third parties will, directly or indirectly, make any payment, gift or other commitment to its customers, to government officials or to agents, directors and employees of each Party, or any other party in a manner contrary to applicable laws (including but not limited to the U. S. Foreign Corrupt Practices Act and, where applicable, legislation enacted by member states and signatories implementing the OECD Convention Combating Bribery of Foreign Officials), and shall comply with all relevant laws, regulations, ordinances and rules regarding bribery and corruption. Nothing in this ABB GTC/Goods shall render either Party or any of its Affiliates liable to reimburse the other for any such consideration given or promised.

12.3 Either Party's material violation of any of the obligations contained in this Clause 12 (Compliance with Relevant Law) may be considered by the other Party to be a material breach of the respective contractual relationship for the sale of Goods to which this ABB GTC/Goods applies, and shall entitle such Party to terminate such contractual relationship with immediate effect and without prejudice to any further right or remedies under such contractual relationship or applicable law.

12.4 Supplier shall indemnify without any limitations Customer for all liabilities, damages, costs, or expenses incurred as a result of any such violation of the above mentioned obligations and termination of the respective contractual relationship for the sale of Goods.

12.5 Supplier herewith acknowledges and confirms that it has received a copy of ABB's Code of Conduct and ABB's Supplier Code of Conduct or has been provided information on how to access the ABB Codes of Conduct online ([www.abb.com](http://www.abb.com) – Integrity – Code of Conduct). Supplier agrees to perform its contractual obligations under the ABB GTC/Goods and the respective contractual relationship with substantially similar standards of ethical behaviour as stated in the above mentioned ABB Codes of Conduct.

12.6 Supplier must comply with the ABB Lists of Prohibited and Restricted Substances and with the reporting and other requirements regarding Conflict Minerals (available under [www.abb.com](http://www.abb.com) – Supplying to ABB – Doing Business with ABB). Any statement made by Supplier to Customer (whether directly or indirectly, e. g. where applicable via the ABB Supplier Registration and Pre-Qualification System) with regard to materials used for or in connection with the Goods will be deemed to be a representation under the Contract.

12.7 Supplier represents and warrants that it is knowledgeable with, and is and will remain in full compliance with all applicable export and import laws, regulations, instructions, and policies, including, but not limited to, securing all necessary clearance requirements, export and import licenses and exemptions from, and making all proper filings with appropriate governmental bodies and/or disclosures relating to the provision of services, the release or transfer of goods, hardware, software and technology to non U.S. nationals in the U.S., or outside the U.S., the release or transfer of technology and software having U.S. content or derived from U.S. origin software or technology.

12.8 No material or equipment included in the Goods shall originate from any company or country listed in any relevant boycott list issued by the authority in the country where the material or equipment shall be used or an authority otherwise having influence over the equipment and material forming part of Goods. If any of the Goods is or will be subject to export restrictions, it is Supplier's responsibility to promptly inform Customer in writing of the particulars of such restrictions.

12.9 Supplier shall indemnify and hold Customer harmless for all claims, demands, losses, damages, costs, fines, penalties, attorney's fees and all other expenses arising from export restrictions concealed by Supplier. With respect to export restrictions solely attributable to Customer's use of the Goods, the now said warranty shall only apply to the extent Supplier has knowledge of or reasonably should have been aware of such use.

12.10 Supplier must indicate the customs tariff numbers of the country of consignment for all Goods. For controlled Goods, the national export control numbers must be indicated and, if the Goods are subject to U.S. export regulations, ECCN or ITAR classifications. Proofs of preferential origin as well as conformity declarations and marks of the country of consignment or destination are to be submitted without being requested; certificates of origin upon request.

### 13. CONFIDENTIALITY AND DATA PROTECTION

13.1 Supplier is obliged to observe secrecy regarding any data or information acquired during the fulfilment of the Contract irrespective of whether such data or information relates to Customer, its Affiliates or their respective customers or suppliers ("Customer Data"). This includes in particular, but is not limited to, all technical or commercial know-how, drawings, specifications, inventions, processes or initiatives which are of a confidential nature. To safeguard this,

13.1.1 Supplier shall process or use Customer Data only in accordance with Customer's instructions and with all applicable laws and regulations; for the avoidance of doubt, processing in accordance with the Contract shall be considered to be an instruction from Customer;

13.1.2 Supplier shall not (i) use Customer Data for any other purposes than for providing the Goods, or (ii) reproduce Customer Data in whole or in part in any form except as may be required to fulfil its obligations under the Contract; (iii) disclose Customer Data nor grant access to such data to any third party without Customer's prior written consent; no third parties in the meaning of this provision are subcontractors approved by Customer;

13.1.3 Supplier shall take appropriate measures suited to the type of Customer Data to be protected (i) to prevent unauthorised persons from gaining access to data processing systems with which Customer Data are processed or used, (ii) to prevent data processing systems from being used without authorisation, (iii) to ensure that persons entitled to use a data processing system have access only to the data to which they have a right of access, and that Customer Data cannot be read, copied, modified or removed without authorisation in the course of processing or use and after storage, (iv) to ensure that Customer Data cannot be read, copied, modified or removed without authorisation during electronic transmission or transport, and that it is possible to monitor and establish to which bodies the transfer of Customer Data by means of data transmission facilities is envisaged, (v) to ensure that it is possible to monitor and establish whether and by whom Customer Data have been entered into data processing systems, modified or removed, (vi) to ensure that, in the case of commissioned processing of Customer Data, the data are processed strictly in accordance with the instructions of Customer, (vii) to ensure that Customer Data are protected from accidental or unlawful destruction or loss, (viii) to ensure that data collected for different purposes can be processed separately. Supplier shall document the implementation of the technical and organizational measures in detail and shall present this to Customer for review upon request. Where this review raises the need for amendments, these must be applied amicably;

13.1.4 Supplier shall ensure and prove that those members of its staff who may come into contact with Customer Data in the course of fulfilling their tasks are subject to the same obligation to confidentiality as applicable to Supplier. Supplier shall confirm this in writing upon Customer's request. Customer may verify compliance with the technical and organisational measures undertaken by Supplier any time upon reasonable notice;

13.1.5 The commissioning of subcontractors requires Customer's previous written consent. This applies also in those instances when one subcontractor is replaced by a subsequent one. The contracts awarded by Supplier to its subcontractors are to be formulated in such a manner that they meet the requirements regarding confidentiality and data protection agreed upon in the Contract. Supplier shall provide Customer with information on the essentials of such contracts and on the

measures implemented by the subcontractors to fulfil their obligations regarding confidentiality and data protection. If requested by Customer Supplier shall present its respective contractual documents for the former to examine. Supplier shall ensure that Customer has the same rights to monitor the subcontractors as Customer has to monitor Supplier. Subcommissions in the meaning of this provision do not include ancillary services ordered by Supplier from third parties which are not directly related to Customer, such as telecommunications services, maintenance and user support, cleaning, auditing or the disposal of data media. Even where ancillary services are taken from third parties, Supplier must however ensure confidentiality and undertake monitoring activities.

13.2 The obligation to confidentiality does not apply to such data (i) whose disclosure is required for the fulfilment of the Contract; (ii) which are publicly known at the time Supplier receives them or which subsequently become publicly known through no action of Supplier itself; (iii) which were already known to Supplier prior to its initial activity for Customer and for which no duty to observe secrecy applies; (iv) which is made accessible to Supplier by third parties and for which no duty to observe secrecy applies or (v) which Supplier is obliged to disclose by mandatory law or by legally binding instruction of a court of law or a public authority. Insofar as Supplier wishes to invoke one of the above exceptions, the burden of proof for the existence of the factual preconditions for such exception shall lie with Supplier.

13.3 Supplier shall not retain any Customer Data for longer than necessary to provide the Goods or than determined by Customer. Immediately after termination of the Contract or at any time on Customer's demand, Supplier shall, at the choice of Customer, immediately deliver to Customer all copies of such data provided by Customer to Supplier for the purposes of the Contract or received otherwise by Supplier while providing the Goods and/or delete securely all Customer Data from its database. Supplier shall certify to Customer that it has not retained any copies of Customer Data with a written confirmation of destruction. Such confirmation shall be signed by duly authorized signatories of Supplier.

13.4 With regard to any data or information belonging to Customer or its Affiliates relating to an identified or identifiable individual or legal entity or any other entity which is subject to applicable data protection or privacy laws and regulations or being qualified as Personally Identifiable Information within the meaning of the applicable laws ("Personal Data"), Supplier will comply with all applicable data protection and privacy laws and regulations. In addition to the other stipulations in this Clause 13 the following applies:

13.4.1 Supplier shall not process Personal Data in or transfer Personal Data to a country with a level of data protection that is not at least equivalent with the level of data protection that applies within the country of origin of the Personal Data without Customer's prior written consent. Upon Customer's request and where required by applicable law, in particular if Customer or its Affiliates are located in Switzerland or in a country which is a Member State of the European Union (EU) or another signatory to the Agreement on the European Economic Area (EEA), Supplier agrees to enter into a separate data transfer agreement (EU Standard Contractual Clauses/Swiss Data Processing Agreement) with Customer and/or its Affiliates for the transfer of Personal Data to third countries.

13.4.2 Supplier shall inform Customer without delay about serious incidents arising in the course of normal operations, suspicions of breaches of data privacy or other irregularities regarding the processing of Customer's or its Affiliates' Personal Data. In such cases Supplier and Customer shall agree on the further handling of the Personal Data. Supplier shall inform Customer without delay about checks performed and measures taken by a supervisory authority. This also applies regarding investigations into administrative or criminal offences.



13.4.3 Supplier will comply with any request by Customer to access, correct, block or delete Personal Data insofar as Customer is obliged to such request by law.

13.4.4 In case the legislation of a country in which Supplier provides Goods to Customer or its Affiliates requires a contract governing data privacy topics which are not covered by this Clause 13, Supplier agrees to enter into such contract.

13.5 Supplier agrees that Customer shall be allowed to provide any information received from Supplier to any other ABB Affiliate.

13.6 The obligation to Confidentiality and Data Protection exists for an indefinite period of time and therefore this Clause 13 shall survive the expiration or termination of the Contract for any reason.

#### **14. LIABILITY AND INDEMNITY**

14.1 Without prejudice to applicable mandatory law or unless otherwise agreed between the Parties, Supplier shall compensate/indemnify Customer for all damages and losses in connection with the Goods whether or not Supplier may have been negligent or at fault (i) for Supplier's breaches of the terms of Contract, and (ii) for any claim, except for IPR Indemnification for which Clause 11 (Intellectual Property) applies, made by a third party (including employees of Supplier) against Customer in connection with the Goods and to the extent that the respective liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods delivered by Supplier and/or its sub-contractors. Upon Customer's request Supplier shall defend Customer against any third party claims.

14.2 Supplier shall be responsible for observance of all of its suppliers and/or sub-contractors, and it shall be responsible for the acts, defaults, negligence or obligations of any of its suppliers and/or sub-contractors, its agents, servants or workmen as fully as if they were the acts, defaults, negligence or obligations of Supplier.

14.3 The provisions of this Clause 14 (Liability and Indemnity) shall survive any performance, acceptance or payment pursuant to this ABB GTC/Goods and shall extend to any substituted or replacement Goods delivered by Supplier to Customer.

14.4 Unless otherwise expressly stated in the respective Order, Supplier shall maintain in force, and upon request provide evidence of, adequate liability insurance and statutory worker's compensation/employer's liability insurance with reputable and financially sound insurers. Nothing contained in this Clause 14 (Liability and Indemnity) shall relieve Supplier from any of its contractual or other legal liabilities. The insured amount cannot be considered nor construed as limitation of liability.

14.5 Customer reserves the right to set off any claims under the Order against any amounts owed to Supplier.

#### **15. TERM AND TERMINATION OF ORDERS**

15.1 The respective contractual relationship established by an Order under this ABB GTC/Goods may be terminated for convenience in whole or in part by Customer upon giving Supplier thirty (30) calendar days written notice, unless otherwise expressly stated in the relevant Order. In such event Customer shall pay to Supplier the value of the already delivered but unpaid parts of the Goods and proven direct costs reasonably incurred by Supplier for the undelivered and unpaid parts of the Goods, however in no event more than the agreed purchase price for the Goods under the respective Order. No further compensation shall be due to Supplier.

15.2 In the event of Supplier's breach of the Contract, including a breach of warranty, Customer shall be entitled to terminate the respective Contract established by an Order under this ABB GTC/Goods if Supplier fails to take adequate and timely actions to remedy a breach as requested by Customer. In such event, Customer shall have no obligation to compensate Supplier for the already delivered but unpaid parts of the Goods and Supplier shall be obliged to pay back to Customer any remuneration received from Customer for the Goods and take back the Goods at Supplier's own cost and risk.

15.3 Upon termination Supplier shall immediately and at Supplier's expense safely return to Customer all respective Customer property (including any documentation, data, and applicable Intellectual Property) and Customer information then in Supplier's possession or under Supplier's control and provide Customer with the complete information and documentation about the already delivered parts of the Goods.

#### **16. FORCE MAJEURE**

16.1 Neither Party shall be liable for any delay in performing or for failure to perform its obligations under a respective Order if the delay or failure results from an event of "Force Majeure." For clarification, Force Majeure means an event that was not foreseeable by the affected Party at the time of execution of the respective Order, is unavoidable and outside the control of the affected Party, and for which the affected Party is not responsible, provided such event prevents the affected Party from performing the respective Order despite all reasonable efforts, and the affected Party provides notice to the other Party within five (5) calendar days from occurrence of the respective event of Force Majeure.

16.2 If an event of Force Majeure occurs which exceeds thirty (30) calendar days either Party shall have the right to terminate the relevant Order forthwith by written notice to the other Party without liability to the other Party. Each Party shall use its reasonable endeavours to minimise the effects of any event of Force Majeure.

#### **17. ASSIGNMENT AND SUB-CONTRACTING**

17.1 Supplier shall not assign, sub-contract, transfer, or encumber an Order or any parts thereof (including any monetary receivables from Customer) without prior written approval of Customer.

17.2 Customer may at any time assign, transfer, encumber, sub-contract or deal in any other manner with all or any of its rights or obligations under the respective Order and/or ABB GTC/Goods to any of its own ABB Affiliates.

#### **18. NOTICES**

Any notice shall be given by sending the same by registered mail, courier, fax or by e-mail to the address of the relevant Party as stated in the Order or to such other address as such Party may have notified in writing to the other for such purposes. E-mail and fax expressly require written confirmation issued by the receiving Party. Electronic read receipts may not under any circumstances be deemed as confirmation of notice. Electronic signatures shall not be valid, unless expressly agreed in writing by duly authorised representatives of the Parties.

#### **19. WAIVERS**

Failure to enforce or exercise, at any time or for any period, any term of the ABB GTC/Goods or an Order does not constitute, and shall not be construed as, a waiver of such term and shall not affect the right later to enforce such term or any other term herein contained.

#### **20. GOVERNING LAW AND DISPUTE SETTLEMENT**

20.1 The respective Order and/or ABB GTC/Goods shall be governed by and construed in accordance with the laws of the country (and/or the state, as applicable) of Customer's legal registration, however under exclusion of its conflict of law rules and the United Nations Convention on International Sale of Goods.

20.2 For domestic dispute resolution matters, whereby Customer and Supplier are registered in the same country, any dispute or difference arising out of or in connection with the respective Order and/or ABB GTC/Goods, including any question regarding its existence, validity or termination or the legal relationships established by the respective Order and/or ABB GTC/Goods, which cannot be settled amicably, shall be submitted to the jurisdiction of the competent courts of Customer's registration, unless other courts or arbitration are agreed in writing between the Parties.

20.3 For cross border dispute resolution matters whereby Customer and Supplier are registered in different countries, unless agreed otherwise in writing between the Parties, any dispute or difference arising out of

or in connection with the respective Order and/or ABB GTC/Goods, including any question regarding its existence, validity or termination or the legal relationships established by the respective Order and/or ABB GTC/Goods, which cannot be settled amicably, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The place of arbitration shall be the location where Customer is registered, unless otherwise agreed in writing. The language of the proceedings and of the award shall be English. The decision of the arbitrators shall be final and binding upon both Parties, and neither Party shall seek recourse to an ordinary state court or any other authority to appeal for revisions of the decision.

#### **21. SEVERABILITY**

The invalidity or unenforceability of any term or of any right arising pursuant to the ABB GTC/Goods and/or the Order shall not adversely affect the validity or enforceability of the remaining terms and rights, and the ABB GTC/Goods and/or the Order shall be given effect as if the invalid, illegal or unenforceable provision had been deleted and replaced by a provision with a similar economic effect to that of the deleted provision if this can be achieved by another provision.

#### **22. SURVIVAL**

22.1 Provisions of the ABB GTC/Goods which either are expressed to survive its termination or from their nature or context it is contemplated that they are to survive such termination shall remain in full force and effect notwithstanding such termination.

22.2 The obligations set forth in Clauses 9 (Warranty), 10 (Remedies), 11 (Intellectual Property), 13 (Confidentiality and Data Protection) and 14 (Liability and Indemnity) shall survive termination.

22.3 The obligations set forth under Clause 13 (Confidentiality and Data Protection) shall be valid for a period of five (5) years from Delivery of the Goods or termination of the Order unless otherwise agreed between the Parties.

#### **23. ENTIRETY**

The ABB GTC/Goods and the Order constitute the entire Contract and understanding between the Parties and replace any prior agreement, understanding or arrangement between the Parties, whether oral or in writing, except to the extent of fraud or any fraudulent misrepresentation. The relationship of the Parties is that of independent parties dealing at arm's length and nothing in this underlying contractual relationship shall be construed to constitute Supplier as an agent or employee of Customer or so as to have any kind of partnership with Customer, and Supplier is not authorised to represent Customer as such.

#### **24. FURTHER ASSURANCES**

The Parties shall do and execute all such further acts and things as are reasonably required to give full effect to the rights given and the transactions contemplated by the respective Order and/or ABB GTC/Goods.

